



**Subject:**  
**Date:**



FW: Anti-Hybrids Legislation  
14 June 2018 13:05:44

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**From:** [Redacted]  
**Sent:** 07 June 2018 13:52

**To:** [Redacted]  
[Redacted]

**Cc:** [Redacted]  
[Redacted]

**Subject:** RE: Anti-Hybrids Legislation

Dear [Redacted] and [Redacted]

We have been liaising members of the ASF's Accounting and Tax Subcommittee and other key industry representatives and following lengthy discussion we would like to propose the following:

#### 1. **Addendum or Replacement Explanatory Memorandum**

We understand that the 2017 Legislation Handbook prepared by the Department of the Prime Minister and Cabinet notes that replacement EMs and addendums can be made where, prior to the passage of the bill, the EM is found to contain a mistake which needs correcting (see attached at 7.42). The following examples below seem to extend to clarifying matters, as well as correcting mistakes:

- the addendum to the EM of the Road Vehicle Standards Bill 2018, which clarifies matters following concerns being raised by the Senate Standing Committee on the Scrutiny of Bills;
- the replacement EM for the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014, which corrects mistakes and clarifies matters – see, for example, pages 45, 46 and 49.
- the replacement EM for the Personal Property Securities Bill 2009, which corrects mistakes and clarifies certain matters, for example on pages 16-20.

We would be happy to provide you with copies of those changes if you wish.

If the Minister were open to preparing an Addendum to the EM or Replacement EM, we would like to propose that the **following clarifying statement** be incorporated in it:

**“It would not be expected that payments made upon tranches of debt issued by a bona fide securitisation vehicle (for example, a vehicle engaged in “securitisation” transactions as defined in the Prudential Practice Guide APG 120 released by APRA) would be regarded as having been made under a “structured arrangement” for the purposes of section 832-210. For example, if payments on certain tranches of notes issued by the securitisation vehicle were taxed at a later time in the noteholder’s country of residence than when a deduction is allowed in Australia, and it would not be reasonable to conclude that the issuer had regard to the hybrid tax outcome in the pricing and marketing of those notes, then in the absence of any other indicia the requirements of section 832-210 should not be satisfied.”**

## 2. Second reading speech

Alternatively, and as [REDACTED] has referred to her email of 4 June, if the Minister is only prepared to clarify the concerns by making a statement in his second reading/summing up speech on the Bill then we would like to propose the **following clarifying statement** be included in it:

**“The “*structured arrangement*” definition is not intended to impinge upon ordinary commercial transactions, including ordinary bond issuances and securitisation transactions, where, although participants would reasonably be expected to take into account the tax treatment of the investment in making their investment decision, it would not be reasonable to conclude that the issuer had regard to the availability of hybrid tax outcomes in the pricing and marketing of those notes.”**

Could you please discuss these proposals with the Minister and let us know what is decided. In the meantime if you would like further clarification on any aspect of the above, please feel free to contact us and we would be more than happy to organise a quick call with the key stakeholders.

The ASF would like to thank you for your ongoing engagement with and the consistent level of your support for the securitisation industry.

Looking forward to hearing from you.

Many thanks and regards  
Robert

### **ROBERT GALLIMORE**

Policy Executive | Australian Securitisation Forum

[REDACTED]

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